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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,958	11/03/2003	Alex MacMurdo	M113.2N-10592-US02	5068
490	7590	04/07/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			BARNEY, SETH E	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/699,958	Applicant(s) MACMURDO, ALEX	
	Examiner Seth Barney	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on 20 March 2006.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 18-33 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 18-33 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

DETAILED ACTION

1. The Finality of the previous office action is withdrawn. The amendment filed March 20, 2006 is entered. An office action on the merits follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18-33 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,315,152 to Kalisz.

Kalisz discloses a aerosol container having a applicator tube. Kalisz teaches attaching the tubes by means of a magnetic bracket to the container. Kalisz does not disclose making the tubes out of magnetic material and directly securing them to the container. Kalisz further teaches making an item magnetic in order to secure it to another object. See column 6, lines 47 to 58. The main goal of the bracket of Kalisz is to secure the tubes when not in use by magnetic attachment. In view of this teaching it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tubes themselves out of magnetic material in order to achieve the same goal of Kalisz with less parts and without needing a complex part having a very specific necessary shape. Making the tubes themselves magnetic solves the identical problem Kalisz is designed for, but does so in a more convenient and compact manner. This modification meets all of the limitations of claims 18-33.

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4. Claims 18-33 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,315,152 to Kalisz in view of U.S. Patent No. 5,051,034 to Goodman.

Kalisz discloses a aerosol container having a applicator tube. Kalisz teaches attaching the tubes by means of a magnetic bracket to the container. Kalisz does not disclose making the tubes out of magnetic material and directly securing them to the container. Kalisz further teaches making an item magnetic in order to secure it to another object. See column 6, lines 47 to 58. The main goal of the bracket of Kalisz is to secure the tubes when not in use by magnetic attachment. It is old and well known in the art to make objects out of magnetic material to conveniently store them when not in use. Goodman specifically teaches making a tube out of magnetic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tubes of Kalisz out of magnetic material as taught by Goodman in order to eliminate the bracket of Kalisz and allow for convenient storage of the tubes when not in use with as few parts as possible. This modification meets all of the limitations of claims 18-33.

Response to Arguments

5. Applicant's arguments with respect to claims 18-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,416,830 to Yoshida et al. discloses a magnetic tube. U.S. Patent No. 5,100,058 to Wei discloses attaching a nozzle to a car by magnetic means. U.S. Patent No. 3,782,799 to Hansen discloses using a magnetic body to store an object when not in use. U.S. Patent No. 5,163,566 to Hempel discloses using a magnetic body to store an object when not in use. U.S. Patent No. 5,630,517 to Maznik discloses using a magnetic body to store an object when not in use. U.S. Patent No. 5,760,668 to Testa et al. discloses using a magnetic body to store an object when not in use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri), first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney
Examiner
Art Unit 3752

sb




Eric Kease
Primary Examiner
TC 3700